

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

JOHNATHAN McFARLAND, )  
                          )  
Plaintiff,             )  
                          )  
v.                     )                          No. 4:12CV727 CDP  
                          )  
UNITED PARCEL SERVICE, )  
                          )  
Defendant.            )

**MEMORANDUM AND ORDER**

This matter is before me on plaintiff's response to my show cause order directing him to explain why this action should not be dismissed as time-barred. Plaintiff has not presented any legal argument showing that the action is not barred by the limitations period. As a result, I will dismiss this action without prejudice.

Plaintiff is proceeding in forma pauperis under 28 U.S.C. § 1915(e). For this reason, I am required to conduct an initial review of the case and to dismiss it if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e). A case can be dismissed under 28 U.S.C. § 1915(e) if the statute of limitations has run. E.g., Myers v. Vogal, 960 F.2d 750, 751 (8th Cir. 1992).

Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, for alleged employment discrimination. Plaintiff has

submitted a copy of his right to sue letter; the right to sue letter was mailed to plaintiff on January 8, 2008. Plaintiff filed this lawsuit on April 23, 2012.

A plaintiff in a Title VII action has ninety days from receipt of the right to sue letter to file a civil action. 42 U.S.C. § 2000e-5(f). Failure to file a timely civil action warrants dismissal of the complaint. E.g., Braxton v. Bi-State Development Agency, 728 F.2d 1105, 1108 (8th Cir. 1984).

The ninety-day period in this case elapsed four years ago. As a result, this action is barred by the limitations period.

Accordingly,

**IT IS HEREBY ORDERED** that this action is **DISMISSED** without prejudice to refiling as a fully-paid case.

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel [Doc. 4] is **DENIED** as moot.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 8th day of June, 2012.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE